

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8615 OF 2004

Chandansinh Umaraoshi Pardeshi

... Appellant

Vs.

Bharatsinh Balusinh Pardeshi

... Respondent

Mr. I.M. Khairdi for the petitioner.

Mr. Surel S. Shah for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 18TH JANUARY, 2005.

P.C.:-

1. The petitioner is the original defendant-tenant. The respondent is the plaintiff-landlord, who had filed a suit on the grounds of bonafide requirement, nuisance and default in payment of arrears of rent. The suit was decreed on the ground of bonafide requirement. The lower appellate court confirmed the decree on the ground of bonafide requirement. The defendant-tenant has challenged the said judgments.

2. I have heard Mr. Khairdi, the learned counsel appearing for the petitioner. He submitted that both the courts below have erred in coming to the conclusion that the plaintiff-landlord requires the suit premises bonafide. I am unable to appreciate this submission. In my opinion, the concurrent findings of fact returned by the courts below in this behalf are unassailable. It

appears from the evidence adduced by the parties that there are six members in the plaintiff's family. His married son stays with him. The plaintiff is old and needs an eye operation. The plaintiff is in possession of only one room belonging to Barshi Municipality. It has come on record that the plaintiff is also in possession of some open space. He carries on some business in the open space. Therefore, his case is that he requires the suit premises bonafide for residence.

The defendant is not able to make any dent in this case of the plaintiff.

3. The learned counsel for the petitioner urged that the trial court has not framed any issue as regards hardship and, therefore, its judgment suffers from grave illegality. It is true that the trial court has not framed any issue with regard to hardship. However, it is apparent from the reading of the judgments of the courts below that the parties have correctly understood the case and evidence is led on the question of hardship. In fact, though the trial court has not framed the issue, the trial court has considered this aspect. It is pertinent to note that the lower appellate court has framed a point in that behalf. The lower appellate court has also applied its mind to the aspect of hardship and came to the conclusion that if the decree is not passed, greater hardship will be caused to the plaintiff. PW-2 Basweshwar Gadave, the employee of the Barshi Municipality has admitted that the son of the defendant is in possession of one guntha area of the municipality.

It is, therefore, not possible to hold that the defendant has no other premises whereas so far as the plaintiff is concerned, considering the number of members of his family, if the decree is not passed, greater hardship will be caused to him. Moreover, both the courts have held that after receipt of notice the defendant has made no effort to find out alternative premises. Hence, there is no substance in this petition. It is rejected.

4. At this stage, the petitioner's counsel seeks time to vacate the suit premises. In the circumstances of the case, the petitioner is granted six month's time to vacate the suit premises on the petitioner and adult members of his family filing usual undertaking in this court. Undertaking to be filed within four weeks from today.

5. Petition stands disposed of in the aforestated terms.

6. C.C. expedited.

(SMT. RANJANA DESAI, J.)